

*There is no telling this story: it must be told.*

In 1781 a fully provisioned ship, the *Zong*,<sup>1</sup> captained by one Luke Collingwood, leaves the West Coast<sup>2</sup> of Africa with a cargo of 470 slaves and sets sail for Jamaica. As is the custom, the cargo is fully insured. Instead of the customary six to nine weeks, this fateful trip will take some four months on account of navigational errors on the part of the captain. Some of the *Zong*'s cargo is lost through illness and lack of water; many others, by order of the captain are destroyed: "Sixty negroes died for want of water ... and forty others ... through thirst and frenzy ... threw themselves into the sea and were drowned; and the master and mariners ... were obliged to throw overboard 150 other negroes."<sup>3</sup>

Captain Luke Collingwood is of the belief that if the African slaves on board die a natural death, the owners of the ship will have to bear the cost, but if they were "thrown alive into the sea, it would be the loss of the underwriters."<sup>4</sup> In other words, the massacre of the African slaves would prove to be more financially advantageous to the owners of the ship and its cargo than if the slaves were allowed to die of "natural causes."

Upon the ship's return to Liverpool, the ship's owners, the Messrs Gregson, make a claim under maritime insurance law for the destroyed cargo, which the insurers, the Messrs Gilbert, refuse to pay. The ship's owners begin legal action against their insurers to recover their loss. A jury finds the insurers liable and orders them to compensate the ship's owners for their losses — their murdered slaves. The insurers, in turn, appeal the jury's decision to the Court of King's Bench, where Lord Mansfield, the Lord Chief Justice of England presides, as he would over many of the most significant cases related to slavery.<sup>5</sup> The three justices, Willes, Buller, and Mansfield, agree that a new trial should be held. The report of that decision, *Gregson v. Gilbert*, the formal name of the case more colloquially known as the *Zong* case, is the text I rely on to create the poems of *Zong!* To not tell the story that must be told.

"The most grotesquely bizarre of all slave cases heard in an English court," is how James Walvin, author of *Black Ivory*, describes the *Zong* case.<sup>6</sup> In the long struggle in England to end the transatlantic slave trade and, eventually, slavery, the *Zong* case would prove seminal: "The line of dissent from the *Zong* case to the successful campaign for abolition of slavery was direct and unbroken, however protracted and uneven."<sup>7</sup> I have found no evidence that a new trial was ever held as ordered, or whether the Messrs Gregson ever received payment for their murdered slaves, and, long before the first trial had begun, the good Captain Collingwood who had strived so hard to save the ship's owners money had long since died.

It is June – June 15, 2002 to be exact, a green and wet June in Vermont. I need – I must, I decide – keep a journal on the writing of *Zong!* I have made notes all along but there is a shift: “Am going to record my thoughts and feelings about this journey,” I write, “as much a journey as the one Captain Collingwood made; like him I feel time yapping at my heels – have but 3 months to deliver this ms.”<sup>8</sup> I flirt with the idea of immersing myself in as much information as I can find about this incident involving the slave ship, *Zong*. I begin reading a novel about it, but am uncomfortable: “A novel requires too much telling,” I write, “and this story must be told by not telling – there is a mystery here – the mystery of evil (mysterium iniquitatis to quote Ivan Illich).”<sup>9</sup> Should I keep on reading? “If what I am to do is find their stories in the report – am I not subverting that aim by reading about the event?”

I have brought two legal texts with me to Vermont, one on contracts, the other on insurance law – a branch of contract law. The boredom that comes with reading case after case is familiar and, strangely, refreshing, a diversion from going somewhere I do not wish to go. I find out what I knew before: that essentially a contract of insurance or indemnity provides that a sum of money will be paid when an event occurs which is adverse to the interests of the person who has secured insurance. But I am hunting for something – anything – to give me some bearing, since I am, metaphorically speaking, at sea, having cut myself off from the comfort and predictability of my own language – my own meaning. A sentence catches my eye: “Surely, little in the way of authority is required to support the statement of Lord Sumner in “Gaunt” that there is no ‘loss’ when the insured brings about the insured event by his own act.”<sup>10</sup> Since Captain Collingwood deliberately drowned the Africans on board his ship, I reason, he cannot, therefore, claim a loss. Does this make me feel better? About the law? But a jury of his peers found otherwise; further, how can there not be a “loss” when 150 people are deliberately drowned? Collingwood was not a seasoned captain: Prior to this fateful voyage his involvement in the slave trade had been as a ship’s surgeon. In this capacity, however, he would have known that maritime law in England at that time exempted insurance claims for the natural death of slaves (which itself begs the question whether the death of someone who is a slave can ever be “natural.”), but held, and ominously so, that insurers were liable when slaves were killed or thrown overboard as a result of rebellions, revolts, or uprisings.

Like Captain Collingwood, I am now fully launched on a journey. Unlike the good captain, however, I do not feel fully provisioned, indeed, uncertainty is my familiar. Can I really fashion poems from this modest report of a legal case, *Gregson vs. Gilbert*? About a story about which there is no telling?

Another green and misty morning in Vermont – I sit on a porch, stare out at the rain and think of a ship and its cargo, of the “plentiful rain . . . that continued a day or two,”<sup>11</sup> of thirst and frenzy. And of a story that cannot be told. I never finished reading

the novel my journal reveals – I turned instead to the law: certain, objective, and predictable, it would cut through the emotions like a laser to seal off vessels oozing sadness, anger, and despair. I yield to a simple but profound curiosity – about the sea, a captain, the sailors, and a ship. About a “cargo.” And the story that must tell itself.

Law and poetry both share an inexorable concern with language – the “right” use of the “right” words, phrases, or even marks of punctuation; precision of expression is the goal shared by both. In the case of the former this concern has both material and nonmaterial outcomes. A rightly worded contract, for instance, can save an individual from financial loss, or secure great financial benefits. A proper interpretation of legislation can result in an individual’s physical freedom, confirmation of civil or human rights, or even death. In *Gregson v. Gilbert* the material and nonmaterial would come together in unexpected ways. An accurate interpretation of the contract of insurance, according to the owners of the *Zong*, that is, would result in great financial benefit to them: they would be paid for murdering 150 Africans. At the same time, it would mean that the deliberate drowning of 150 people was not murder, but merely the disposition of property in a time of emergency to ensure preservation of the rest of the “cargo” – a reasonable interpretation at that time given the law governing contracts of insurance. However, even if the courts had found against the owners of the *Zong* and ruled that they could not claim insurance compensation, given the law at that time, neither Captain Collingwood nor those who had helped in the massacre could be charged with murder, since what was destroyed, being property, was not capable of being murdered.<sup>12</sup>

*I enter a different land, a land of language – I allow the language to lead me somewhere – don’t know where, but I trust.*

• water of want

*Everything is here I tell myself – birth, death, life – murder, the law, a microcosm – a universe.*

My intent is to use the text of the legal decision as a word store; to lock myself into this particular and peculiar discursive landscape in the belief that the story of these African men, women, and children thrown overboard in an attempt to collect insurance monies, the story that can only be told by not telling, is locked in this text. In the many silences within the Silence of the text. I would lock myself in this text in the same way men, women, and children were locked in the holds of the slave ship *Zong*.

But this is a story that can only be told by not telling, and how am I to not tell the story has to be told. I return to my notes made the year before:

*July 12, ’01*

*The only reason why we have a record is because of insurance – a record of property criteria for selection:*

- verbs
- nouns, adjectives
- random selection that parallels the random selection of Africans
- it is in the text — the challenge, it leaps out
- the Africans are in the text
- the legal report is the tomb stone which speaks
- limitation — haiku, sonnets
- the limitation here is the text itself — the language comprising the record

*Language appears to be a given — we believe we have the freedom to choose any words we want to work with from the universe of words, but so much of what we work with is a given.*

- madness outside of the box of order
- the impulse to order there all the time
- grammar an ordering but a violent and necessary ordering
- a violent but necessary ordering
- there are two poems — the one i want to write and the one writing itself
- something underneath there but which doesn't want to spell itself out — there is an underlying current not fleshed out but there all the same

*When I start spacing out the words, there is something happening in the eye tracking the words across the page, working to pull the page and larger “meaning” together — the eye trying to order what cannot be ordered, trying to “make sense” of something, which is what it must have been like trying to understand what was happening on board the Zong — meantime there are smaller individual poems to be found in different places on the page as the lines are juxtaposed and work together.*

*July 21, '01*

*The legal text parallels a certain kind of entity — a whole, a completeness which like African life is rent and torn.*

*This time though I do the tearing — but always there is this movement towards trying to “make sense” make it “readable,” “understandable.”*

- making a whole from a fragment, or, perhaps, a fragment from a whole
- logic from illogic
- rationality from irrationality
- find myself trying to find reason in the language that I myself have fractured and fragmented and yet being dissatisfied when the poem becomes too comprehensible

*The ones I like best are those where the poem escapes the net of complete understanding — where the poem is shot through with glimmers of meaning.*

*One approach was literally to cut up the text and just pick words randomly, then I*

*would write them down but nothing seemed to yield — this was most similar to the activity of the random picking of African slaves — selected randomly then thrown together, hoping that something would come of it — that they would produce something. Owners did have an interest in them working together, like I do in having words work together. That working together only achieved through force. In my case, it is grammar which is the ordering mechanism, the mechanism of force.*

- am interested in them not working together — resisting that order and desire or impulse to meaning
- my urge to make sense must be resisted
- have argued that there are always at least 2 poems — the one you want to write and the other that must write itself, and this work appears to be the culmination of that because am not even using my own words. Are they ever my own words, though?

#### *Dramatis personae (justices and lawyers)*

*Davenport  
Piggott  
Heywood  
Mansfield  
Willes  
Buller  
Lee  
Chambre*

*All the justices agree that the action of the ship owner was wrong — in law, that is, but not because it was murder — wanting to leave off articles, conjunctions, etc.*

- not reading text for meaning, but for something else
- choosing verbs and nouns — criteria for selection as Africans were selected

To not tell the tale that must be told I employ a variety of techniques:

- I white out and black out words (is there a difference?).
- I mutilate the text as the fabric of African life and the lives of these men, women and children were mutilated.
- I murder the text, literally cut it into pieces, castrating verbs, suffocating adjectives, murdering nouns, throwing articles, prepositions, conjunctions overboard, jettisoning adverbs: I separate subject from verb, verb from object — create semantic mayhem, until my hands bloodied, from so much killing and cutting, reach into the stinking, eviscerated innards, and like

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some seer, sangoma,<sup>13</sup> or prophet who, having sacrificed an animal for signs and portents of a new life, or simply life, reads the untold story that tells itself by not telling.

Very early on I develop a need to know the names of the murdered and actually call James Walvin, author of *Black Ivory*, in England to ask him if he knew how I could locate them. "Oh no," his tone is commiserative, "they didn't keep names." I don't — cannot believe this to be true, but later on, as a result of correspondence with a colleague who is researching and writing a book on the *Zong* case,<sup>14</sup> I receive a copy of a sales book kept by one Thomas Case, an agent in Jamaica who did business with the owners of the *Zong*. It is typical of the records kept at that time: Purchasers are identified while Africans are reduced to the stark description of "negroe man," [sic] "negroe woman," or, more frequently, "ditto man," "ditto woman." There is one gloss to this description: "Negroe girl (meagre)." There are many "meagre" girls, no "meagre" boys. This description leaves me shaken — I want to weep. I leave the photocopied sheet of the ledger sitting on my old typewriter for days. I cannot approach the work for several days.

The African men, women, and children on board the *Zong* were stripped of all specificity, including their names. Their financial value, however, was recorded and preserved for insurance purposes, each being valued at 30 pounds sterling.<sup>15</sup>

When I return to the manuscript I find I need more working space and decide to set up another desk that allows me to turn my back on my room. There is a moment of panic: Should I be looking at all the documents related to the case, such as the trial transcripts or Granville Sharp's letter to the Court of King's Bench, with a view to using the language there as well? The text of *Gregson v. Gilbert* appears so modest, so fragile, so "meagre." I "decide against it — important to keep the limitation," I write, reminding myself that the case is the tombstone, the one public marker of the murder of those Africans on board the *Zong*, locating it in a specific time and place. It is a public moment, a textual monument marking their murder and their existence, their small histories that ended so tragically.

I fight the desire to impose meaning on the words — it is so instinctive, this need to impose meaning: this is the generating impulse of, and towards, language, isn't it — to make and, therefore, to communicate, meaning? How did they — the Africans on board the *Zong* — make meaning of what was happening to them? What meaning did they make of it and how did they make it mean? This story that must be told; that can only be told by not telling.

July 12, '02

Some — all the poems — need a great deal of space around them — as if there is too much cramping around them, as if they need to breathe ...

• what am I doing? Giving voice — crying out?

- for the first time am looking at breaking down the words themselves and pulling words out of them
- the words suggesting how to work with them — I look at them and certain words leap out at me, asking me to choose them; a sense at times of doing something for these hidden people, these lost kin ... I burn incense, eyes skimming the text for phrases, words, feelings, as one would cast one's eyes over the sea looking for bodies — so much flotsam and jetsam ...
- the text is whole
- then rent
- always what is going on seems to be about water

The poems resist my attempts at meaning or coherence and, at times, I too approach the irrationality and confusion, if not madness (*madness is outside of the box of order*), of a system that could enable, encourage even, a man to drown 150 people as a way to maximize profits — the material and the nonmaterial. Or is it the immaterial? Within the boundaries established by the words and their meanings there are silences; within each silence is the poem, which is revealed only when the text is fragmented and mutilated, mirroring the fragmentation and mutilation that slavery perpetrated on Africans, their customs and ways of life.

I witness a continuation of my engagement with the idea of Silence vis-à-vis silence begun in *Looking for Livingstone*<sup>16</sup>: There I explored it as one would a land, becoming aware that Silence was its own language that one could read, interpret, and even speak.

July 30, '02

The poems proceed slowly — feel am getting the hang of it — the style, the rhythm. Should I do a long poem in my own voice? There is a phrase that hangs around, is always there: the ancients walk within us. A Canadian sculptor, Dawn McNutt, whose work I like uses this phrase in her catalogue. It holds me — all the ancients walk within us. It's attributed to Jung but she has been unable, after much searching, to verify this.

Dawn, too, talks of faults and fragments in her work.

The poems are about language at its most fundamental in the sense of the very basic way in which children put language together when they begin to speak, building syllable on syllable — carefully — leaving off articles: Africans want water ...

- a sense of having to let go
- the poems demand that I let go
- several of the poems appear to be about water — why not?
- I light incense each time — in memory of
- words need a lot of space to breathe — breathing space
- and what's happening is little bits of poetry appearing within the larger poem

# *There is no telling this story*

In its potent ability to decree that what is is not, as in a human ceasing to be and becoming an object, a thing or chattel, the law approaches the realm of magic and religion. The conversion of human into chattel becomes an act of transubstantiation the equal of the metamorphosis of the eucharistic bread and wine into the body and blood of Christ. Like a magic wand the law erases all ties — linguistic, societal, cultural, familial, parental, and spiritual; it strips the African down to the basic common denominator of man, woman, or child, albeit sometimes meagre. Without a history, name, or culture. In life but without life. Without life in life — with a story that cannot but must be told.

"Oath moan mutter chant . . . babble curse chortle . . . ululation": These words would in *She Tries Her Tongue; Her Silence Softly Breaks*<sup>17</sup> metamorphose into intelligible speech. To chart the outline of the wound. I am reminded of Lindon Barrett's argument in *Blackness and Value* that the shout was the "principal context in which black creativity occurred."<sup>18</sup> In *Looking for Livingstone . . .*, the metamorphosis occurs when the lower case "silence" of the colonised becomes the fertile Silence of the Traveler, a Silence that arises from a rooting in tradition and a knowing of what the colonial script was all about. In *Zong!*, the African, transformed into a thing by the law, is re-transformed, miraculously, back into human. Through oath and through moan, through mutter, chant and babble, through babble and curse, through chortle and ululation to not-tell the story. . . .

*"The poet is a detective and the detective a poet," writes Thomas More,<sup>19</sup> and that's what I feel like — a detective sifting the evidence, trying to remove the veil biding the facts.*

What did, in fact, happen on the *Zong*? Can we, some two hundred years later, ever really know? Should we? These are the questions I confront. Although presented with the "complete" text of the case, the reader does not ever know it, since the complete story does not exist. It never did. All that remains are the legal texts and documents of those who were themselves intimately connected to, and involved in, a system that permitted the murder of the Africans on board the *Zong*.

August 2002

- poems about language — some poems just fall — fall into place
- the muscle of a poem is in the verbs — found that when I was working on one with no verbs — couldn't do anything with it
- muscles give shape, hold it up
- some poems just seem to offer themselves up

• am here at the desk I've put at the south wall — suddenly a piece of paper floats down, apparently from nowhere — it contains notes I had earlier made on the Bantu view of death and the afterlife of ancestors — those who have died but continue to work on behalf of the living

I deeply distrust this tool I work with — language. It is a distrust rooted in certain historical events that are all of a piece with the events that took place on the *Zong*. The language in which those events took place promulgated the non-being of African peoples, and I distrust its order, which hides disorder; its logic hiding the illogic and its rationality, which is simultaneously irrational. However, if language is to do what it must do, which is communicate, these qualities — order, logic, rationality — the rules of grammar must be present. And, as it is with language, so too with the law. Exceptions to these requirements exist in religious or spiritual communication with nonhuman forces such as gods or supra-human beings, in puns, parables, and, of course, poetry. In all these instances humans push against the boundary of language by engaging in language that often is neither rational, logical, predictable or ordered. It is sometimes even noncomprehensible, as in the religious practice of speaking in tongues, which fatally subverts the very purpose of language. Poetry comes the closest to this latter type of communication — is, indeed, rooted in it — not only in pushing against the boundaries of language, but in the need for each poet to speak in his or her own tongue. So, in *She Tries Her Tongue . . .* the imperative for me was to move beyond representation of what the New World experience was — even one filtered through my own imagination and knowing, for that would have meant working entirely within the order of logic, rationality, and predictability; it would have meant ordering an experience which was disordered (and cannot ever be ordered), irrational, illogical and unpredictable; it would have meant doing a second violence, this time to the memory of an already violent experience. The disorder, illogic and irrationality of the *Zong!* poems can no more tell the story than the legal report of *Gregson v. Gilbert* masquerading as order, logic, and rationality. In their very disorder and illogic is the not-telling of the story that must be told.

October 4, '02

*Am stumped by some of the poems. Suddenly they stop being about language and I feel tired. Seems I was trying to put my own meaning on the words and that doesn't work. Have to let them offer themselves up. Have found a batch of rough ones at the back and they move but they move more towards the lyric and less towards language. Not sure why yet.*

On their surface the poems approximate language poetry; like the language poets I question the assumed transparency of language and, therefore, employ similar strategies to reveal the hidden agendas of language. In my own work, however, the strategies signpost a multifaceted critique of the European project. Language was and is integral

to this project, hence the centrality of the critique of language in my work. In the present case I use the text of the legal report almost as a painter uses paint or a sculptor stone — the material with which I work being preselected and limited. Henry Moore observed that his manner of working was to remove all extraneous material to allow the figure that was “locked” in the stone to reveal itself. It is an image that has always appealed to me, although I work with words rather than stone.

Having engaged with this idea, however, I realize that in my approach to this text I have only revealed what is commonplace, although hidden: that even when we believe we have freedom to use whatever words we wish to use, that we have the entire lexicon of English, at least those of us who are Anglophone, at our disposal, and are able to express ourselves in whatever ways we wish to (all of us who live in the so-called liberal democracies, that is), much of the language we work with is already preselected and limited, by fashion, by cultural norms — by systems that shape us such as gender and race — by what’s acceptable. By order, logic, and rationality. This, indeed, is also the story that cannot be told, yet must be told.

October 4, '02

• was one poem in which I began carving words out of other words:

“defend the dead” is first one

carving words out of names of justices and lawyers

pig

man

port

field

wood

bull

The not-telling of this particular story is in the fragmentation and mutilation of the text, forcing the eye to track across the page in an attempt to wrest meaning from words gone astray. I teeter between accepting the irrationality of the event and the fundamental human impulse to make meaning from phenomena around us. The resulting abbreviated, disjunctive, almost non-sensical style of the poems demands a corresponding effort on the part of the reader to “make sense” of an event that eludes understanding, perhaps permanently. What is “it” about? What is happening? In asking those questions there are echoes here, more than two hundred years later, of what it must have been like for those Africans on board the *Zong*. “(N)egroes want . . . sustenance preservation rest . . . want water . . . overboard.”<sup>20</sup> In the discomfort and disturbance created by the poetic text, I am forced to make meaning from apparently disparate elements — in so doing I implicate myself. The risk — of contamination — lies in piecing together the story that cannot be told. And since we have to work to complete the events, we all become implicated in, if not contaminated by, this activity.

The irony here is that the story is locked within the text of those individuals — members of the judiciary, one of, if not *the* most powerful segment of English society — who were themselves an integral part of a system that engaged in the trade in humans. A system of laws, rules, and regulations that made possible the massacre on board the *Zong*. It is a story that cannot be told; a story that in not telling must tell itself, using the language of the only publicly extant document directly bearing on these events — a legal report that is, at best, only tangentially related to the Africans on board the *Zong*.

In simultaneously censoring the activity of the reported text while conjuring the presence of excised Africans, as well as their humanity, I become both censor and magician. As censor, I function like the law whose role is to proscribe and prescribe, deciding which aspects of the text will be removed and which remain; I replicate the censorial activity of the law, which determines which facts should or should not become evidence; what is allowed into the record and what not. The fact that Africans were human could not be allowed into the legal text. Like the law, I decide what is or is not. As magician, however, I conjure the infinite(ive) of to be of the “negroes” on board the *Zong*. This is the axis on which the text of *Zong!* turns: censor and magician; the told and the untold; the telling and the un-telling of what cannot, yet must, be told.

In the struggle to avoid imposing meaning, I confront the tension between the poem that I want to write and the poem that must write itself. While a concern with precision and accuracy in language is common to both law and poetry, the law uses language as a tool for ordering; in the instant case, however, I want poetry to disassemble the ordered, to create disorder and mayhem so as to release the story that cannot be told, but which, through not-telling, will tell itself.

Oct. 12, '02

• found these later poems a struggle — as if having to work harder to resist my meaning — more lyric . . .

The story that cannot be told must not-tell itself in a language already contaminated, possibly irrevocably and fatally. I resist the seduction of trying to cleanse it through ordering techniques and practices, for the story must tell itself, even if it is a partial story; it must be allowed to be and not be. The half-tellings, and un-tellings force me to enter the zone of contamination to complete it; in so doing I risk being contaminated by the prescribed language of the law — by language in fact.

The basic tool in the study of law is case analysis. This process requires a careful sifting of the reported case to find the kernel of the legal principle at the heart of the decision — the *ratio decidendi* or simply the *ratio*. Having isolated that, all other opinion becomes *obiter dicta*, informally referred to as *dicta*. Which is what the Africans on board the *Zong* become — *dicta*, footnotes, related to, but not, the *ratio*.

November 25, '03  
Caledon, Ontario

I cannot say when I first conceive the idea but once it has taken hold I know that I must honour it. "Defend the dead." The Africans on board the Zong must be named. They will be ghostly footnotes floating below the text — "under water . . . a place of consequence"

Idea at heart of the footnotes in general is acknowledgement — someone else was here before — in Zong! footnote equals the footprint.

Footprints of the African on board the Zong.

On the "surface" the *ratio* of *Gregson v. Gilbert* was that "the evidence [did] not support the statement of the loss made in the declaration;"<sup>21</sup> in other words, given the evidence presented to the court, the ship's owners had not satisfactorily proved that they needed to "jettison their cargo," that is, murder 150 African slaves.<sup>22</sup> The "underwater" *ratio* appears to be that the law supercedes being, that being is not a constant in time, but can be changed by the law. The *ratio* at the heart of *Zong!*, however, is simply the story of being which cannot, but must, be told. Through not-telling. And where the law attempts to extinguish being, as happened for 400 years as part of the European project, being trumps the law every time.

Can I? Should I? Will I? Must I? I did. "Break and Enter"<sup>23</sup> the text to release its anti-meaning.

Dec. 15, 2003, Tobago  
Letter to CB

"The text has exploded into a universe of words."

- have given in to the impulse to fragment the words of the text — using it as a sort of grand boggle game and set to trying to find words within words. The text — the reported case — is a matrix — a mother document. I did not come to the decision easily — to break the words open. For a while I feel guilt, as if I have broken my own rules, but that is where the impulse leads — to explode the words to see what other words they may contain. I devise a dictionary with a list of each of the 'mother' words followed by the words contained in that particular word — for instance, apprehension yields hen, sion, pare and pear, to list a few possibilities. As I put the dictionary together, little dramas appear to take place in the margins of the text and so the poem continues to write itself, giving up its stories and resulting in four subsequent movements or books — I think of these poems as the flesh — the earlier 26 poems are the bones.

The alphabet is the universe of language — all the sounds contained in each alphabet of letters and each letter a fragment — of the whole

- a link between the dynamic of the text containing everything and the fundamental flaw that led to Africans being taken.

Jan. '04

- women's voices surfacing in the text — which attempts to neutralize everything suddenly references to menstruation and childbirth and rape — in contrast with the absence of women in the larger Caribbean text as it's articulated at present — and then reading the Granville Sharp's letter yesterday — 24/01/04 — there is reference to women, infants and children — that slows me down — something so raw about that letter — he is so much closer in time to it and it's not neutral — he is taking a side and I am so interested in how someone can be so contrary to his age
- am unable to go on when he questions how many people would have understood English when the commands were given for them to jump or throw themselves overboard — cannot read on — too much for me

It is fall 2005; I attend a talk at Hart House, University of Toronto, by a young forensic anthropologist, Clea Koff, who has written a book about working in Rwanda and Bosnia identifying the bones of the murdered.<sup>24</sup> It's important, she says, for bodies to be exhumed — in doing so you return dignity to the dead. What is the word for bringing bodies back from water? From a "liquid grave"?<sup>25</sup> Months later I do an Internet search for a word or phrase for bringing someone back from underwater that has as precise a meaning as the unearthing contained within the word exhume. I find words like resurrect and subaqueous but not "exaqua." Does this mean that unlike being interred, once you're underwater there is no retrieval — that you can never "exhumed" from water? The gravestone or tombstone marks the spot of interment, whether of ashes or the body. What marks the spot of subaqueous death? Families need proof, Koff says — they come looking for recognizable clothing and say, "I want the bones."

I, too, want the bones.

I come — albeit slowly — to the understanding that *Zong!* is hauntological; it is a work of haunting, a wake of sorts, where the spectres of the undead make themselves present. And only in not-telling can the story be told; only in the space where it's not told — literally in the margins of the text, a sort of negative space, a space not so much of non-meaning as anti-meaning.

Our entrance to the past is through memory — either oral or written. And water. In this case salt water. Sea water. And, as the ocean appears to be the same yet is constantly in motion, affected by tidal movements, so too this memory appears stationary yet is shifting always. Repetition drives the event and the memory simultaneously,<sup>26</sup> becoming a haunting, becoming spectral in its nature.

Haunted by "generations of skulls and spirits,"<sup>27</sup> I want the bones.

November 2005 — Munich Airport

While waiting to make a connection, I sit and watch the flow of people and suddenly become aware that the fragment appears more precious, more beautiful than the whole, if only for its brokenness. Perhaps, the fragment allows for the imagina-

*tion to complete its missing aspects — we can talk, therefore, of the poetics of fragmentation.*<sup>28</sup>

Re-reading *Specters of Marx* by Derrida has clarified some of my own thoughts and confirmed me in my earlier feelings that *Zong!* is a wake. It is a work that employs memory in the service of mourning — an act that could not be done before, as I've argued in an earlier essay about the possible and potential functions of memory.<sup>29</sup> Using Hamlet to interrogate the apparently defunct place and role of Marx and Marxism, Derrida asserts that we must identify the remains and localize the dead. The “work of mourning,”<sup>30</sup> he writes, demands clarity: that we know who the deceased is; whose grave it is; where the grave is and that the body or bodies “remain there” — *in situ*. This imperative for identification, this necessity to lay the bones to rest echo the remarks of the young forensic scientist.

I feel strongly that I need to seek “permission” to bring the stories of these murdered Africans to light — above the surface of the water — to “exqua” them from their “liquid graves.” Indeed, the stories of all the dead. And so, not knowing what this “permission” would look like or even why I feel the need, I journey to Ghana in the summer of 2006. While there I visit a traditional shrine close to one of the slave ports in the homeland of the Ewe people, and meet with the elders and the priest of the shrine. In preparation for this meeting I must dress in cloth, I am told — traditional African cloth, and so I am wrapped by an older woman from head to toe in a beautifully patterned fabric. I remember it as brown and gold. At the shrine I make the traditional offering of Schnapses to the priest and, following the example of the elders, touch my forehead to the ground, after which, and through a translator, we talk of the *Zong*. Of its presence in my life and what it means. None of my ancestors could have been among those thrown overboard, one elder offers. If that were the case, he continues, I would not be there. I am startled. I stare at him, a compact man with the face of a scholar or thinker. A man whose face I recognize — perhaps it is the kindness I see there — although I have never met him before. I have never entertained the thought that I may have had a personal connection to the *Zong*, nor have I ever sought to understand why this story has chosen me. Fundamentally, I don't think it matters, but his comment is still disconcerting. A full year later, on recounting the comment to my daughter, she responds to his comment: “Only if those who were thrown overboard left no offspring on board the *Zong*” Once again I am startled. Again not because I want or even care to link myself to the *Zong*. I am startled at how we, that old man and I, so easily forgot the “meagre” ones — the children. Also, I believe that he, not knowing the story, was unaware that only some of the African slaves were drowned. Before leaving I make an offering to the shrine and to all those lost souls on board the *Zong*.

My flight is routed through London; I plan to spend a few days there so that I can

once again visit Liverpool and its Merseyside Maritime Museum in which there is a permanent exhibit on transatlantic slavery. On my way to England from Ghana via Amsterdam, high up above the earth I am suddenly aware of why I am going to Liverpool, home of the Gregsons, Gilberts, and, not to mention, the good Captain Luke Collingwood. There will be no priests to visit, no one to talk to about a ship and its cargo — a ship that had set sail from that very port. I do know, however, that I have to acknowledge the existence of those Europeans on board the *Zong*, those who like many Africans sickened and died, as well as those who were involved in the murder of the Africans, and thus in the murder of their own souls. And so, I go down to the old port in Merseyside, Liverpool. Hundreds of slave-ships would have set off from this port for what was then known as the Gold Coast of Africa, their holds filled with all manner of things — cloth, guns, beads — to trade. For people. For men, women, and children who would, in turn, be stuffed — things — in the same hold for what would for them be a one way journey to death — living or real. I go down to the water in Merseyside, Liverpool, and pour a libation of spirits for the lost souls on board the *Zong*. All the souls. The approach to the water is mossy and slippery and on my way back from pouring the spirits I fall flat on my ass. I am embarrassed, wondering if anyone has seen me fall and whether the fall means the pleasure or displeasure on the part of the Ancestors.

For the longest while the manuscript weighs heavily: having exploded the words, having scooped the stories out of the magma of the text, the work appears too long and the apparent lyric form and approach of this second part of the book — the four movements — troubles me somewhat, although I accept it. In the fall of 2006, however, having returned from Ghana, and in a farmhouse in the Ontario countryside, the poem finds its own form, its own voice: It suggests something about the relational — every word or word cluster is seeking a space directly above within which to fit itself and in so doing falls into relation with others either above, below, or laterally. This is the governing principle and adds a strongly visual quality to the work.

*Zong!* bears witness to the “resurfacing of the drowned and the oppressed”<sup>31</sup> and transforms the dessicated, legal report into a cacophony of voices — wails, cries, moans, and shouts that had earlier been banned from the text. I recall hearing a radio interview with Gavin Bryars, composer of *The Sinking, the Titanic*, in which he discusses the idea of sound never ceasing within water, an idea that he suggests Marconi believed, since water is a much more “sound-efficient medium”<sup>32</sup> than air. I have often since wondered whether the sounds of those murdered Africans continue to resound and echo underwater. In the bone beds of the sea.

Our entrance to the past is through memory. And water. It is happening always — repeating always, the repetition becoming a haunting. Do they, the sounds, the cries, the shouts of those thrown overboard from the *Zong* repeat themselves over and over until they rise from the ocean floor to resurface in *Zong!*? It is a question that haunts

me. As do the “generations of skulls and spirits,”<sup>33</sup> The spirit in the text and of the text is at work. Working against meaning, working for meaning, working in and out of meaning.

It came upon me one day that the fugue – in both meanings of the word – was a frame through which I could understand *Zong!* In the musical sense of the word, *Zong!* is a counterpointed, fugal antinarrative in which several strands are simultaneously at work. In the classic, fugal form the theme is stated then reiterated in second, third, and subsequent voices. In a similar fashion *Zong!* is a sustained repetition or reiteration of various themes, phrases and voices, albeit fragmented. Interestingly enough, one of the pieces of music that sustained the “writing” of this work was *Spem in Alium*, a forty-voice motet by Thomas Tallis employing five choirs of eight voices. Antiphonal in nature, it prefigures in its form and texture the later fugue.<sup>34</sup>

The fugue has, however, another darker meaning, referring to a state of amnesia in which the individual, his or her subjectivity having been destroyed, becomes alienated from him- or herself. It is a state that can be as brief as a few hours or as lengthy as several years.<sup>35</sup> In its erasure and forgetting of the being and humanity of the Africans on board the *Zong*, the legal text of *Gregson v. Gilbert* becomes a representation of the fugal state of amnesia, serving as a mechanism for erasure and alienation. Further, in my fragmenting the text and re-writing it through *Zong!*, or rather over it, thereby essentially erasing it, the original text becomes a fugal palimpsest through which *Zong!* is allowed to heal the original text of its fugal amnesia.

Describing one of his recent installations – *Inconsolable Memories*<sup>36</sup> – the visual artist Stan Douglas characterizes the work as a recombinant narrative, a technique in which he loops several different narrative strands from the present, past, and future to retell a 1968 Cuban film.<sup>37</sup> The “video or film works repeat looped scenes in an ever-changing order, switch sound tracks from one to another and generally thwart our reflective need for linear narrative.”<sup>38</sup> I am excited by, and recognize, the parallels with the formal ideas in *Zong!* To my mind, however, *Zong!* is not so much a recombinant narrative as a recombinant antinarrative. The story that can’t ever be told.

The parallels go further: In an essay titled “Fugal Encryptions,” Philip Monk, curator of *Inconsolable Memories*, argues that Douglas employs strategies that succeed in apparently “absolving” his work of “authorial intention.”<sup>39</sup> In allowing myself to surrender to the text – silences and all – and allowing the fragmented words to speak to the stories locked in the text, I, too, have found myself “absolved” of “authorial intention.” So much so that even claiming to author the text through my own name is challenged by the way the text has shaped itself. The way it “untells” itself.

One of the strongest “voices” in the *Zong!* text is that of someone who appears to be white, male, and European. Had I approached this “story” in the manner of wanting to write the story *about* the *Zong* and the events surrounding its fateful journey, I would not have chosen a white, male, European voice as one of the primary voices in this

work. My “authorial intention” would have impelled me toward other voices. And for very good reason. This realization, however, presents me with a powerful example of how our language – in the wider sense of that word – is often, as I wrote earlier here, preselected for us, simply by virtue of who we understand ourselves to be, and where we allow ourselves to be placed. And, by refusing the risk of allowing ourselves to be absolved of authorial intention, we escape an understanding that we are at least one and the Other. And the Other. And the Other. That in this post post-modern world we are, indeed, multiple and “many-voiced.”<sup>40</sup>

Monk’s use of the word “absolve” is intriguing, given its connection with the idea of freeing from debt, blame, obligation, or guilt. Within the moral framework of *Zong!*, however, I find it an appropriate word in that it points to a relation and relationship, between past, present, and future generations; it speaks to a relation and relationship of debt or obligation of spirit owed by later to earlier generations. And I understand now how this, in turn, relates to the organizing principle of relationship used in *Zong!* mentioned earlier.

As the work shapes itself after my return from Africa – in the books or movements that develop after the first twenty-six poems – words rearrange themselves in odd and bizarre combinations: at times the result appears the verbal equivalent of the African American dance style “crumping,”<sup>41</sup> in which the body is contorted and twisted into intense positions and meanings that often appear beyond human comprehension. At times it feels as if I am getting my revenge on “this/fuck-mother motherfuckin language”<sup>42</sup> of the colonizer – the way the text forces you – me – to read differently, bringing chaos into the language or, perhaps more accurately, revealing the chaos that is already there.

The stories on board the *Zong* that comprise *Zong!* are jammed together – “crumped” – so that the ordering of grammar, the ordering that is the impulse of empire is subverted. Clusters of words sometimes have meaning, often do not – words are broken into and open to make non-sense or no sense at all, which, in turn, becomes a code for another submerged meaning. Words break into sound, return to their initial and originary phonic sound – grunts, plosives, labials – is this, perhaps, how language might have sounded at the beginning of time?

There are times in the final book, *Ferrum*, when I feel as if I am writing a code and, oddly enough, for the very first time since writing chose me, I feel that I *do* have a language – this language of grunt and groan, of moan and stutter – this language of pure sound fragmented and broken by history. This language of the limp and the wound. Of the fragment. And, in its fragmentation and brokenness the fragment becomes mine. Becomes me. Is me. The ultimate question on board the *Zong* is what happened? Could it be that language happened? The same letters in the same order mean different things in different languages: ague and *ague* – the first English, the second Yoruba. The former meaning bodily shaking in illness, the latter, to fast. Take a letter away and a new word

in a different language is born. Add a letter and the word loses meaning. The loss of language and meaning on board the *Zong* levels everyone to a place where there is, at times, no distinction between languages — everyone, European and African alike, has reverted, it appears, to a state of pre-literacy.

*How do I read a work like this? This is the same question I faced after writing She Tries....*

One of the names that surfaces in the text of *Zong!* is Dido and along with it a cluster of images about the historical Dido and her founding the city of Carthage. A couple of years later, as I browse a bookstore in Toronto I come upon Simon Schamas' *Rough Crossings*,<sup>43</sup> a work about Britain, the slave trade, and the American revolution. He recounts the story of the *Zong*, but what is startling is the history he reveals about Lord Mansfield, Chief Justice of England, who, as mentioned earlier, presided at the appeal in *Gregson v. Gilbert*. His nephew, Captain John Lindsay, was a sea captain who had captured a Spanish slaving vessel and, it appears, fathered a daughter with an African woman on board that ship — the name of that child was Dido Elizabeth Belle Lindsay. Dido grew up in her great uncle's, Lord Mansfield's, home, where, it appears, she was treated as a relative, albeit one of lesser standing.<sup>44</sup> The well-known English painter Johan Zoffany was commissioned to paint a portrait of her and her cousin, Lady Elizabeth Murray, which is now on display at Scone Palace in Scotland. The details of the relationship between Captain Lindsay and Dido's mother are not recounted. Was she raped? Was there ever, in fact, a relationship? Why was the child brought to England and allowed to reside with Lord Mansfield? This link between a name or word that surfaced in the text and actual events is one of the most startling of serendipitous events that have "marked" the making of *Zong!*

Another was computer related: Having completed the first draft of one section I attempt to print it; the laser printer for no apparent reason prints the first two or three pages superimposed on each other — crumpled, so to speak — so that the page becomes a dense landscape of text. The subsequent pages are, however, printed as they should be. With the beginning of each movement of the second part of the book — Sal, Ventus, Ratio, and Ferrum — the same thing happens. I have never been able to find a reason for it and my printer has not since done that with anything else I have written.

I now think of the poems that come after the first twenty-six as a translation of the opacity of those early poems — a translation that, like all good translations, has a life of its own. Together, *Os, Sal, Ventus, Ratio, and Ferrum*<sup>45</sup> comprise the movements of *Zong!*, the story that must be told that cannot be told, which in turn becomes a metaphor for slavery — *the* story that simultaneously cannot be told, must be told, and will never be told.

The descendants of that experience appear creatures of the word, apparently brought into ontological being by fiat and by law. The law it was that said we were. Or

were not. The fundamental resistance to this, whether or not it was being manifested in the many, many instances of insurrection, was the belief and knowledge that we — the creatures of fiat and law — always knew we existed *outside* of the law — that law — and that our be-ing was prior in time to fiat, law and word. Which converted us to property: "pig port field wood bull negroe." It is a painful irony that today so many of us continue to live, albeit in an entirely different way, either outside of the law, or literally imprisoned within it. Unable to not-tell the story that must be told.

The continued exclusion of African Americans (I would say New World Africans) from systems of value, Landon Barrett argues, creates a need to "pursue novel or original access to meaning, voice, value and authority."<sup>46</sup> In its cacophonous representation of the babel that was the *Zong*, *Zong!* attempts and tempts just such access to meaning.

Many is the time in the writing of this essay when my fingers would hit an S rather than a Z in typing *Zong*. Song and Zong; with the exception of one letter the two words are identical; if said quickly enough they sound the same. In the title poem of *She Tries* ... I write:

When silence is  
Abdication of word tongue and lip  
Ashes of once in what was  
...Silence  
Song Word Speech  
Might I...like Philomela...sing  
continue  
over  
into  
...pure utterance<sup>47</sup>

Why the exclamation mark after *Zong?*? *Zong!* is chant! Shout! And ululation! *Zong!* is moan! Mutter! Howl! And shriek! *Zong!* is "pure utterance." *Zong!* is Song! And Song is what has kept the soul of the African intact when they "want(ed) water...sustenance...preservation."<sup>48</sup> *Zong!* is the Song of the untold story; it cannot be told yet must be told, but only through its un-telling.

## NOTES

1. The name of the ship was the *Zorg*, meaning "care" in Dutch. An error was made when the name was repainted.
2. The ship left from the island of São Tomé off the coast of Gabon.
3. *Gregson v. Gilbert*, 3 Dougl. 233. The case mentions 150 slaves killed. James Walvin in *Black Ivory*, 131, others 130 and 132. The exact number of African slaves murdered remains a slippery signifier of what was undoubtedly a massacre.
4. *Substance of the Debate on a Resolution for Abolishing the Slave Trade*, London, 1806, pp. 178-9.
5. The most famous of these cases, the Somerset case, established the precedent that no one could be captured in England and taken away to be sold. Despite the best efforts of Lord Mansfield to avoid proclaiming that slavery was illegal in England, the case was quickly interpreted as establishing the law that slavery could not exist in England.
6. James Walvin, *Black Ivory*, Harper Collins Publishers, London, England, 1992, p. 16.
7. Walvin, p. 19
8. One of the early drafts of the manuscript.
9. Ivan Illich, "The Corruption of Christianity, Ideas," CBC Radio One.
10. Bradley Crawford, Marvin G. Baer, Robert T. Donald, and James A. Rendall, eds., *Cases on the Canadian Law of Insurance*, The Carswell Company Ltd, Toronto, Canada, 1971, p. 391.
11. See earlier: *Gregson v. Gilbert*.
12. The abolitionist Granville Sharp did try, unsuccessfully, to get murder charges laid against those involved in the massacre.
13. *Sangoma* is a Zulu word meaning healer of both physical and spiritual ailments.
14. Ian Baucom, *Specters of the Atlantic*, Duke University Press, Durham, North Carolina, 2005.
15. Granville Sharp, *Memoirs of Granville Sharp*, Prince Hoare, ed., (Henry Colburn and Co., London, 1820), pp. 242-244. In his letter to Lords of the Admiralty Sharp challenged the sum of 30 pounds sterling, since women and children were assigned a lesser value.
16. *Looking for Livingstone: An Odyssey of Silence*, Mercury Publishers, Toronto, 1991.
17. M. NourbeSe Philip, *She Tries Her Tongue; Her Silence Softly Breaks*, Pouj Publications, Toronto, Ontario, 2006.
18. Lindon Barrett, *Blackness and Value*, Cambridge University Press, Cambridge, England, 1999.
19. Thomas More, *Original Mind*, HarperCollins Publisher, New York, 2000.
20. Excerpts from *Zong!*
21. See earlier: *Gregson v. Gilbert*.
22. There was evidence, for instance, that the captain had not attempted to ration the water they had on board before deciding to drown the Africans on board.
23. A charge under the Criminal Code of Canada.
24. Clea Koff, *The Bone Woman*, Alfred A. Knopf Canada, Toronto, 2004.
25. Elicia Brown Lathon, Ph.D. dissertation, *I Cried Out and None but Jesus Heard*, Louisiana State University and Agricultural and Mechanical College, 2005.
26. The events surrounding the *Zong* have long been the focus of artistic attention. The English painter J. M. W. Turner's 1840 painting, *Slavers throwing overboard the dead and the dying, Typhoon [sic] Coming On*, was inspired by the event; so too was the novel *Feeding the Ghosts* by British Guyanese poet and novelist Fred D'Aguiar, Ecco, Hopewell, N.J., 1999. Marina Warner has also explored this event in an online essay titled "Indigo, Mapping the Waters." Ian Baucom argues in *Specters of the Atlantic* that the continued witnessing of the *Zong* atrocity by writers and artists points to an "order of historical time" that does not so much pass as "accumulate" p. 305.
27. Jacques Derrida, *Specters of Marx*, Routledge, New York, U.S.A., 1991, p. 9.
28. "Fugues and Fragments" in the online journal *Anthurium*, vol. 3, no. 2, Fall 2005. [http://scholar.library.miami.edu/anthurium/volume\\_3/issue\\_2/philip-fugues.htm](http://scholar.library.miami.edu/anthurium/volume_3/issue_2/philip-fugues.htm).
29. M. NourbeSe Philip, In the Matter of Memory . . . , *Fertile Ground: Memories & Visions*, Kalamuya Salaam and Kysha N. Brown, eds., Runigate Press, New Orleans, 1996.
30. Derrida, p. 9.
31. Poet Maureen Harris in talk at Influxy, Continuing Ed., University of Toronto, December 2006.
32. Gavin Bryars, *The Sinking, The Titanic* (CD), Polygram Group, Markham, Canada, 1994.
33. Derrida, p. 9.
34. There were certain pieces of music I played often, at times obsessively, that seemed to accompany this work. Oddly enough, Van Morrison's *Endless Days of Summer* conveyed a sense of loss of something brief, beautiful, and fleeting. So did Ali Farka Toure's *Hawa Dolo*. The simplicity and lyricism of the songs of Kenyan Luo musician Ayub Ogada recalled a memory of what might have been lost to those on board the *Zong*.
35. The Southern writer Walker Percy has explored this state in many of his novels. *Percyscapes* (Louisiana State University Press, Baton Rouge, 1999) by Robert W. Rudnicki is a helpful exploration and analysis of how the condition has been treated in literature. He includes Ralph Ellison's *Invisible Man* among novels dealing with this state.
36. Stan Douglas, *Inconsolable Memories*, York University, Toronto, June 2006.
37. *Memorias del Subdesarrollo* [Memories of Underdevelopment], Tomás Gutiérrez Alea, director, Cuba, 97 mins., 1968.
38. "Stan Douglas," Kevin Temple, NOW, April 13-19, 2006, vol. 25, no. 33. [http://www.nowtoronto.com/issues/2006-0413/cover\\_story.php](http://www.nowtoronto.com/issues/2006-0413/cover_story.php).
39. Cindy Richmond and Scott Watson, eds., *Inconsolable Memories: Stan Douglas*, Joslyn Art Museum, Omaha, Nebr. and the Morris and Helen Belkin Art Gallery, Vancouver, British Columbia, 2005.
40. "She the many-voiced one of one voice," from "And Over Every Land and Sea" from *She Tries Her Tongue*, p. 10.
41. Crumping originated in the inner city areas of Los Angeles. It is a visceral, explosive, and expressive type of dance style that incorporates tribal and hip hop styles.
42. From "Testimony Stoops to Mother Tongue," *She Tries Her Tongue*, p. 53.
43. Simon Schamas, *Rough Crossings*, Viking Canada, Toronto, 2005.
44. Dido resided with Lord Mansfield and his wife from the age of five at his residence where it appears she was raised as a lady within the family, albeit one of lesser status. It is unknown what, if any, impact Lord Mansfield's intimate contact with his mixed-race niece may have had on his views of slavery.
45. I chose Latin to emphasize the connection with the law, which is steeped in Latin expressions, and, also to reference the fact that Latin was the father tongue in Europe.
46. Barrett, p. 81.
47. *She Tries Her Tongue*, p. 98.
48. Excerpted from *Zong!*

## *Gregson v. Gilbert*

**GREGSON v. GILBERT.** Thursday, 22d May, 1783. Where the captain of a slaveship mistook Hispaniola for Jamaica, whereby the voyage being retarded, and the water falling short, several of the slaves died for want of water, and others were thrown overboard, it was held that these facts did not support a statement in the declaration, that by the perils of the seas, and contrary winds and currents, the ship was retarded in her voyage, and by reason thereof so much of the water on board was spent, that some of the negroes died for want of sustenance, and others were thrown overboard for the preservation of the rest.

This was an action on a policy of insurance, to recover the value of certain slaves thrown overboard for want of water. The declaration stated, that by the perils of the seas, and contrary currents and other misfortunes, the ship was rendered foul and leaky, and was retarded in her voyage; and, by reason thereof, so much of the water on board the said ship, for her said voyage, was spent on board the said ship; that before her arrival at Jamaica, to wit, on, &c. a sufficient quantity of water did not remain on board the said ship for preserving the lives of the master and mariners belonging to the said ship, and of the negro slaves on board, for the residue of the said voyage; by reason whereof, during the said voyage, and before the arrival of the said ship at Jamaica — to wit, on, &c. and on divers days between that day and the arrival of the said ship at Jamaica — sixty negroes died for want of water for sustenance; and forty others, for want of water for sustenance, and through thirst and frenzy thereby occasioned, threw themselves into the sea and were drowned; and the master and mariners, for the preservation of their own lives, and the lives of the rest of the negroes, which for want of water they could not otherwise preserve, were obliged to throw overboard 150 other negroes. The facts, at the trial, appeared to be, that the ship on board of which the negroes who were the subject of this policy were, on her voyage from the coast of Guinea to Jamaica, by mistake got to leeward of that island, by mistaking it for Hispaniola, which induced the captain to bear away to leeward of it, and brought the vessel to one day's water before the mistake was discovered, when they were a month's voyage from the island, against winds and currents, in consequence of which the negroes were thrown [233] overboard. A verdict having been found for the plaintiff, a rule for a new trial was obtained on the grounds that a sufficient necessity did not exist for throwing the negroes overboard, and also that the loss was not within the terms of the policy.

Davenport, Pigott, and Heywood, in support of the rule. — There appeared in evidence no sufficient necessity to justify the captain and crew in throwing the negroes overboard. The last necessity only could authorize such a measure; and it appears, that at the time when the first slaves were thrown overboard, there were three butts of good water, and two and a half of sour water, on board. At this time, therefore, there was only an apprehended necessity, which was not sufficient. Soon afterwards the rains came on, which furnished water for eleven days, notwithstanding which more of the negroes were thrown overboard. At all events the loss arose not from the perils of the seas, but from the negligence or ignorance of the captain, for which the owners, and not the insurers, are liable. The ship sailed from Africa without sufficient water, for the casks were found to be less than was supposed. She passed Tobago without touching, though she might have made that and other islands. The declaration states, that by perils of the seas, and

contrary currents and other misfortunes, the ship was rendered foul and leaky, and was retarded in her voyage; but no evidence was given that the perils of the seas reduced them to this necessity. The truth was, that finding they should have a bad market for their slaves, they took these means of transferring the loss from the owners to the underwriters. Many instances have occurred of slaves dying for want of provisions, but no attempt was ever made to bring such a loss within the policy. There is no instance in which the mortality of slaves falls upon the underwriters, except in the cases of perils of the seas and of enemies.

Lee, S.-G., and Chambre, contra. — It has been decided, whether wisely or unwisely is not now the question, that a portion of our fellow-creatures may become the subject of property. This, therefore, was a throwing overboard of goods, and of part to save the residue. The question is, first, whether any necessity existed for that act. The voyage was eighteen weeks instead of six, and that in consequence of contrary winds and calms. It was impossible to regain the island of Jamaica in less than three weeks; but it is said that [234] other islands might have been reached. This is said from the maps, and is contradicted by the evidence. It is also said that a supply of water might have been obtained at Tobago; but at that place there was sufficient for the voyage to Jamaica if the subsequent mistake had not occurred. With regard to that mistake, it appeared that the currents were stronger than usual. The apprehension of necessity under which the first negroes were thrown overboard was justified by the result. The crew themselves suffered so severely, that seven out of seventeen died after their arrival at Jamaica. There was no evidence, as stated on the other side, of any negroes being thrown overboard after the rains. Nor was it the fact that the slaves were destroyed in order to throw the loss on the underwriters. Forty or fifty of the negroes were suffered to die, and thirty were lying dead when the vessel arrived at Jamaica. But another ground has been taken, and it is said that this is not a loss within the policy. It is stated in the declaration that the ship was retarded by perils of the seas, and contrary winds and currents, and other misfortunes, &c. whereby the negroes died for want of sustenance, &c. Every particular circumstance of this averment need not be proved. In an indictment for murder it is not necessary to prove each particular circumstance. Here it sufficiently appears that the loss was primarily caused by the perils of the seas.

Lord Mansfield. — This is a very uncommon case, and deserves a reconsideration. There is great weight in the objection, that the evidence does not support the statement of the loss made in the declaration. There is no evidence of the ship being foul and leaky, and that certainly was not the cause of the delay. There is weight, also, in the circumstance of the throwing overboard of the negroes after the rain (if the fact be so), for which, upon the evidence, there appears to have been no necessity. There should, on the ground of reconsideration only, be a new trial, on the payment of costs.

Willes, Justice, of the same opinion.

Buller, Justice. — The cause of the delay, as proved, is not the same as that stated in the declaration. The argument drawn from the law respecting indictments for murder does not apply. There the substance of the indictment is proved, though the instrument with which the crime was effected be different from that laid. It would be dangerous [235] to suffer the plaintiff to recover on a peril not stated in the declaration, because it would not appear on the record not to have been within the policy, and the defendant would have no remedy. Suppose the law clear, that a loss happening by the negligence of the captain does not discharge the underwriters, yet upon this declaration the defendant could not raise that point.

Rule absolute on payment of costs.